

***United States Court of Appeals
for the Second Circuit***

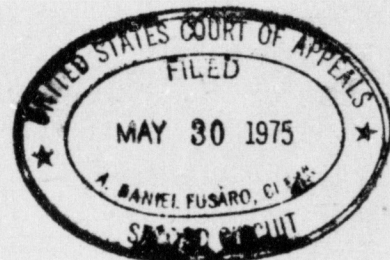


**APPELLANT'S
BRIEF**

75 7226

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 75-7226



PETER V. KEILEY,

Plaintiff-Appellant,

-against-

ELBERT HINKSON, etc., et al.,

Defendants-Appellees

On Appeal from the United States District Court
for the Southern District of New York

BRIEF FOR PLAINTIFF-APPELLANT

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UNITED STATES COURT OF APPEALS
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No. 75-7226

PETER V. KEILEY,

Plaintiff-Appellant,

-against-

ELBERT HINKSON, etc., et al.,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S BRIEF

STATEMENT OF THE ISSUES PRESENTED

1. Was the plaintiff entitled, on his demand, to the convening of a three-judge court, to determine the constitutionality of § 242 and other sections of the New York Vehicle and Traffic Law and § 883a-7.0 and other sections of Title A of Chapter 40 of the New York City Administrative Code?
2. Is the issue of whether an administrative agency may render and enforce its own judgments a substantial issue under the Due Process Clause of the 14th Amendment or the Full Faith and Credit Clause of the United States Constitution?
3. Is the issue of whether the stepped-up penalties assessed against a car owner for delayed payment of a traffic ticket a substantial issue under the Equal Protection Clause or Due Process Clause of the 14th Amendment to the United States Constitution?

4. Is the issue of whether a state or local government may raise substantial revenues (after related expenses) under a police power a substantial issue under the Due Process Clause of the 14th Amendment to the United States Constitution?

5. Should the District Court Judge have rendered a summary judgment in favor of the defendants?

STATEMENT OF THE CASE

This is an appeal from an order denying the motion of plaintiff-appellant, Peter V. Keiley (hereinafter sometimes called the "plaintiff") for the convening of a three-judge court to determine the constitutionality of the two statutes establishing the New York City Parking Violations Bureau ("PVB") and granting defendants' cross-motion to dismiss (which the court below treated as a motion for summary judgment).

Plaintiff is an investigator presently and for the last 13 years employed by a major corporation (122).^{*} He is a Marine Corps veteran of the Korean War, having served as a sergeant (17 months in a combat zone) and is married and has six children and owns his own home in Queens (123). Although he has received parking tickets from time to time, he has always been prepared to pay all parking tickets not previously paid by him (122).

On February 28, 1972, when plaintiff paid \$525 to renew his motor vehicle registration, he was advised by the New York State Department of Motor Vehicles that there were no other parking tickets outstanding against him (123). Yet, only a few months later, plaintiff was contacted by a City

^{*} Numbers in parentheses refer to pages in the Appendix, unless otherwise indicated.

Marshal who advised plaintiff that an execution had been issued against plaintiff's property (83) and demanded an additional \$470 from plaintiff (123). Plaintiff was supplied with a computer print-out dated only three weeks after plaintiff's payment of the \$525 (123). When plaintiff asked the Marshal's office whether the sum demanded represented any part of the tickets plaintiff had already paid, he was advised that the Marshal was not interested in prior payments and that the \$470 now being demanded (plus costs) constituted "judgments" in favor of the PVB then on file in the Civil Court, New York County, and that these "judgments" would have to be immediately satisfied (123). Acting on this information, plaintiff visited the Civil Court, New York County, but after investigation could find no judgments entered against him in that Court. Plaintiff returned to the Marshal's office the following day and told that office of his efforts and of his failure to find any judgments entered against him (123). Even though he was so advised, the Marshal nonetheless persisted that if plaintiff did not pay the "judgments", the Marshal would levy against plaintiff's property (123). Having no alternative but to comply, the plaintiff thereupon made arrangements to pay the \$470 (plus costs) over a period of time (124). In fact, on two occasions when plaintiff faltered in his scheduled payments, the Marshal issued an official notice and demand in the name of the Civil Court that, unless plaintiff made further payment, his personal property (i.e., automobile, television set, electric appliances) would be sold and his salary garnisheed (84). It was only on February 5, 1974 that plaintiff finally was able to finish paying off the alleged Civil Court "judgments" in the total amount of \$548.50, including the Marshal's fees (124).

During the interim, however, in January, 1973, plaintiff was again informed by the New York State Department of Motor Vehicles that his motor vehicle registration would not be renewed unless certain outstanding parking tickets were paid (124). Upon receipt of this information, plaintiff visited the PVB where he was presented with still another computer print-out, dated December 20, 1972, which allegedly detailed plaintiff's then outstanding parking tickets (124). When plaintiff examined the print-out, he discovered that some of the parking tickets listed thereon had either already been paid by him or were in the process of being paid to the Marshal (124). When he apprised the PVB of this discrepancy, he was simply told that he would still have to pay the full amount, after which plaintiff could request, in writing, an "appeal" to the PVB (124).

On February 5, 1974, plaintiff received what purported to be a "satisfaction" for payment of the \$470 in "judgments" entered against him. This "satisfaction" was given to plaintiff only after plaintiff insisted upon it and consisted of a photocopy of a computer print-out stamped "Returned Fully Satisfied, 2/5/74 Bruce Kemp, Marshal, City of New York" (124). A few months after receiving this satisfaction, plaintiff was contacted by the American Credit Bureau which advised the plaintiff that the PVB had now obtained \$1,980 in "judgments" against him (125). When plaintiff explained to the credit agency that he thought he had already paid some of the alleged judgments and had a "satisfaction" to prove it, plaintiff was told that despite his belief, plaintiff would still be required to pay the full amount of the "judgments" although, upon doing so, he would

then be permitted to appeal in writing to the PVB (i.e., for a possible refund) (125). When plaintiff once again inquired where the alleged judgments against him were entered, he was told they were on file in Civil Court, New York County (125). Accordingly, plaintiff once again visited the Clerk's office of the Civil Court, New York County, where he was again informed that all judgments entered in the Civil Court have an index number and that, absent such a number, it would be difficult, if not impossible, to determine if in fact judgments had been entered against plaintiff. Plaintiff also personally checked the alphabetical judgment records of the Civil Court from A to Z but was still unable to find any judgments against him (80).

Since January, 1973, the plaintiff visited the offices of the PVB on at least five occasions where he spent on the average two or three hours in an attempt to obtain information about these alleged judgments (80). On two occasions, he waited from 7:00 A.M. until 9:00 A.M. in order to be given an interview (80). During this time, plaintiff also visited the County Clerk's office in Queens County and the County Clerk's office in Kings County but failed to find any judgments entered against him by the PVB (80). In addition, plaintiff visited the main headquarters of the PVB at 475 Park Avenue South and was merely told to repeat his prior efforts. When plaintiff demanded a copy of the summonses allegedly issued to him, this information was refused and plaintiff was merely given still another computer print-out (81).

In total frustration, plaintiff contacted a friend and attorney, who advised plaintiff to bring on an order to show cause and to appear

pro se in Civil Court, New York County, in order to vacate the alleged judgments against him (81). Thereafter, with the help of the same attorney, the necessary papers were prepared and on September 23, 1974 plaintiff visited the Office of the Clerk of the Civil Court in order to have the order to show cause signed. After one of the clerks read the papers, he in turn called the Chief Clerk to the desk who, after making several telephone calls, informed plaintiff that the Court would not accept plaintiff's request for an order to show cause because Supreme Court Justice Edward Thompson, the Administrative Judge of the Civil Court, had, in a directive to all judges and clerks of the Civil Court, ordered that all requests for judicial relief against the PVB be referred back to the PVB (82). Judge Thompson's directive, which was shown to plaintiff, provides in pertinent part as follows:

"Orders to show cause concerning any judgment sought or obtained by the Parking Violations Bureau (PVB) shall not be signed. This Court does not possess the underlying records of the PVB, and therefore is not in a position to judge the truth or falsity of the averments made in the moving papers."

* * *

"Do not be misled by the fact that the papers presented to you may recite that the PVB judgment in question was or will be entered in the Civil Court. Such entry is pro forma and only designed to allow levy and execution by City Marshals and for no other purpose. As such they are not judgments of this Court. (153). *

* Parenthetically, as amazing as this memorandum would seem to be, it also appears to be totally at odds with the official certification of the Clerk of the Civil Court, Mr. Phoenix Ingraham, who states flatly that the alphabetical judgment register containing the 500,000 liens that were filed in the County Clerk's Office by defendant Hinkson (as noted infra) represents correct transcripts from the "docket of judgments" in Mr. Ingraham's office (154).

The Action Below

Since his access to the State courts was thus effectively barred, plaintiff had no option but to commence an action in the District Court below, charging that the "judgments" allegedly entered against him by the PVB were illegal and unenforceable because they were "rendered" by an unconstitutional court, that is, the PVB, which administrative agency had been clearly designed in major part for revenue purposes and which was hiding behind the facade of a constitutional court (i.e., the Civil Court) and issuing process in the name of that same court (150).

Plaintiff further charged that the PVB constitutionally could not be given "judicial" power under the constitutional doctrine of separation of powers to "render" a default judgment within the applicable two-year statutory period prescribed by the statutes in question; and that in any event such "judgments" were procedurally unenforceable because not in conformity with provisions of the CPLR applicable to civil judgments entered in the Civil Court.

Plaintiff's action was commenced on November 19, 1974. A week later, before defendants submitted any papers in opposition to the action, City Councilman Matthew Troy, Chairman of the City's Finance Committee, proposed an amnesty on unpaid parking (stepped-up) penalties (as distinguished from the basic parking fines) to encourage motorists to pay the basic fines yet unpaid, thereby providing New York City with much-needed funds for the City's much-publicized budget gap (43). A week later, Mayor Beame rejected Councilman Troy's proposal (45), noting that \$177 million was due on outstanding summonses, of which \$102 million represented delinquency penalties

(i.e., stepped-up penalties) over and above the amount of the basic fines; that \$30 million more represented summonses issued against rental cars, official governmental cars and others, leaving a revenue source of only \$45 million (45). Shortly after that, on December 13, 1974, the PVB docketed 500,000 of its "judgments" as liens in the New York County Clerk's office (47) with the announced intention of preventing owners of real property from selling or mortgaging their homes (46). The PVB has been working with officials in the states of New Jersey and Connecticut to obtain an identification of the 60,000 motorists from these two states who have unpaid "judgments", raising substantial issues under the Full Faith and Credit Clause of the United States Constitution (52-3, 102).

The amount of the stepped-up penalty is \$25 at a maximum, on unpaid tickets having basic fines ranging from \$10-25 (71, 77), and the maximum stepped-up penalty is assessed in less than 3 months from the issuance of the summons (77, 12th entry). A \$25 stepped-up penalty within 3 months on a \$10 basic fine is a penalty assessed at the rate of no less than 1,000%, which is far in excess of an 8% normal rate of interest.

Motions Below

On November 26, 1974, plaintiff moved for the convening of a three-judge court (18). Defendants cross-moved for an order dismissing plaintiff's amended complaint (54) on the ground, inter alia, that the amended complaint failed to present a "substantial federal question". As their only "evidence" of the "rendering" of "judgments" against plaintiff, defendants annexed to their motion papers (Exhibits "F" and "G") copies of

two computer print-outs (76-77). Defendants' Exhibit "G" is entitled "Parking Violations Bureau", "Judgment/Scofflaw System", "Monthly-Open Judgments-Name Sequence". No other documents were offered by defendants to prove that there were "judgments" outstanding against plaintiff or that these "judgments" were duly "rendered" and "entered" in a constitutional court; or that a "judgment roll" was created and filed in respect to each of the "judgments" against plaintiff. Indeed, at no point was it ever revealed by defendants whether the judgments in question were those of the PVB or the Civil Court of the City of New York.

Determination of the District Court

The District Court below denied plaintiff's motion for the convening of a three-judge court and converted defendants' cross-motion to dismiss into one for summary judgment, ruling that there was no genuine issue of material fact, and determining that defendants were entitled to judgment dismissing the complaint as a matter of law.

The Court (Wyatt, J.) never fully addressed itself to the question whether the "judgments" in question were in fact valid judgments, that is, whether the PVB, as an administrative agency, had the power to "render" and "enforce" judgments in the first instance. The Court contented itself by saying that, in the Court's opinion, at least, the PVB had substantially complied with the provisions of the CPLR relating to the entry of judgments.

The Court furthermore never shed any light on the issue of whether the "judgments" entered against the plaintiff were those of the PVB or of the Civil Court. Nor did it discuss Judge Thompson's memorandum or plaintiff's denial of access to the courts in his effort to vacate the alleged judgments against him.

The Court dismissed as "frivolous" plaintiff's argument that the assessment of additional penalties against a defaulting violator denied plaintiff's constitutional rights of equal protection and due process, as well as his right not to have excessive fines levied against him.

Nor did the Court below discuss the problem of the disappearing judgments and the multiple rendering of the same judgment. The PVB "judgments" are "rendered" and then "re-rendered" each time a new computer print-out is run off by the PVB (151). Sometimes paid "judgments" are eliminated from the new run-off but other times not (151). The computer print-out does not keep a cumulative record of all previously paid "judgments" so that the evidence of some previously-paid "judgments" vanishes completely from the PVB's "judgment register" (151) making it virtually impossible to determine what "judgments" of the PVB have been satisfied.

ARGUMENT

THE COURT BELOW ERRED BY NOT REQUESTING
THE CONVENING OF A THREE-JUDGE COURT, AND
BY GRANTING DEFENDANTS' MOTION TO
DISMISS AND OTHER RELIEF

Plaintiff moved below for the convening of a three-judge court pursuant to 28 U.S.C. § 2281 and 28 U.S.C. § 2284 to rule upon the constitutionality of § 242 and other sections of Article 2-B of the New York Vehicle and Traffic Law and § 883a-7.0 and other sections of Title A of Chapter 40 of the New York City Administrative Code. Copies of Article 2-B of the New York Vehicle and Traffic Law and Title A of Chapter 40 of the New York City Administrative Code are included in the statutory appendix annexed hereto.

Plaintiff claims that the statutory provisions which authorize the establishment of the PVB are unconstitutional on their face to the extent they authorize the PVB (1) to render and enforce judgments without application to a court; and (2) to assess additional penalties in excess of a basic fine (as distinguished from reasonable interest) against persons who are delayed in paying the basic parking fines. Also, plaintiff claims that the PVB's raising of revenues for New York City in substantial excess over related expenses is an unconstitutional application of the statutes granting the PVB the police power to regulate parking.

In its 26-page opinion (161), the District Court below held there were no substantial constitutional issues, then (1) denied plaintiff's motion for the convening of a three-judge court; (2) dismissed defendants Beame and Goldin as improper parties; and (3) granted defendants' motion to

dismiss under Rule 12(b), F.R.Civ.P., treating it as a summary judgment motion under Rule 56, F.R.Civ.P.

The entire judgment below should be reversed if this Court finds that substantial constitutional issues on the face of the two statutes had been raised by plaintiff in his amended complaint or during the proceedings below. The three-judge court should have been convened immediately and the three-judge court would have had jurisdiction over all issues arising in this action. 28 U.S.C. § 2284. Also, the entire judgment below should be reversed if this Court finds that plaintiff had raised one or more substantial constitutional issues as to the application of the statutes. Accordingly, the District Court below erred by dismissing defendants Beame and Goldin and by granting defendants' motion to dismiss (treating it as a motion for summary judgment). In addition, the court below erred by rendering a final judgment based on conflicting affidavits involving controlling facts, without affording plaintiff an opportunity for discovery or an opportunity to offer additional evidence at an evidentiary hearing.

In his argument below, plaintiff will show that the PVB under the two statutes is an illegal or unconstitutional court and cannot render or enforce judgments; or, in the alternative, that the PVB failed to follow prescribed procedures to have its administrative determinations reduced to lawful judgments in the Civil Court of the City of New York. The effect is that millions of "judgments" are being enforced by execution and levy by marshals, collection agencies and collection attorneys in New York City, elsewhere in New York State, and even in other states (giving rise to a substantial issue under the Full Faith and Credit Clause).

Furthermore, plaintiff will show below that the stepped-up penalty applicable to persons who are late in paying their basic fines is a denial of equal protection under the 14th Amendment because it assesses additional penalties (as distinguished from interest) from the slow payers even though the parking violation itself has ceased, and is a denial of due process because of inadequate legislative standards for the establishment of the penalties.

Finally, plaintiff will show that the application of the two statutes is unconstitutional because the New York municipalities are using the statutes to raise substantial revenues (after related expenses) under the police power, in violation of the Due Process Clause of the 14th Amendment. The difference between a small-town motorist trap where the mayor presides as the police justice and the existing situation in New York City and other cities in New York State is difficult if not impossible to perceive. Ward v. Village of Monroeville, 409 U.S. 57 (1972), quoting Turney v. Ohio, 273 U.S. 510 (1927).

For these reasons, as will be argued below more fully, the judgment should be reversed in its entirety, and a three-judge court should be convened (or this Court should determine the constitutionality of the two statutes itself under the authority of Seergy v. Kings County Republican County Committee, 459 F.2d 308 (2nd Cir. 1972)) or, in the alternative, the case should be remanded to the District Court below for further pre-trial proceedings.

I

CONVENING OF A THREE-JUDGE COURT SHOULD HAVE BEEN
REQUESTED BY THE DISTRICT COURT BELOW UNDER
HAGANS V. LAVINE (SUPREME COURT, 1974)

A major issue presented to this Court by this appeal is whether the two New York statutes alleged by plaintiff to be unconstitutional contain provisions which raise substantial constitutional issues.* The District Court judge is not to decide such constitutional issues, but is to determine merely that one or more such issues do in fact exist. In the event any such issues are determined to exist, the three-judge court is responsible for resolution of the issues. 28 U.S.C. §2284(4-5). Accordingly, the duty of the District Court judge with respect to plaintiff's motion for the convening of a three-judge court, after determination of the existence of one or more substantial constitutional questions, was ministerial, to request the convening of a three-judge court.

In Nieves v. Oswald, 447 F.2d 1109 (2nd Cir. 1973), the court said:

"...the Supreme Court stated that when an application for a three-judge court is addressed to a district judge, his inquiry is limited to determining (1) whether the constitutional question is substantial; (2) whether the complaint at least formally alleges a basis for equitable relief; and (3) whether the case otherwise comes within the requirements of the three-judge statute. If all criteria are established, the single judge must convene a statutory three-judge court. * * *

"Whether these criteria were met in this case depends in turn on the allegations of the complaint, ... all of which are deemed to be true.

* * *

* It appears that the 2nd Circuit does not even require that a statute be unconstitutional "on its face". Instead, the 2nd Circuit has held that a three-judge court should have been convened when application of a statute was unconstitutional. Seergy v. Kings County Republican County Committee, 459 F.2d 308 (2nd Cir. 1972).

"... an insubstantial federal question is presented if the claim is "obviously without merit" or because "its unsoundness so clearly results from the previous decisions of the Supreme Court" ... as to foreclose the subject..." 477 F.2d 111-2.

Also, see Green v. Board of Elections of City of New York, 380 F.2d 445 (2nd Cir. 1967).

A recent decision by the Supreme Court, Hagans v. Lavine, etc., 415 U.S. 528 (1974), certiorari to the 2nd Circuit, made it clear that the test was not whether a "substantial constitutional claim" was presented, stating:

"Only recently this Court again reviewed this general question where it arose in the context of convening a three-judge court under 28 U. S. C. § 2281:

"Constitutional insubstantiality" for this purpose has been equated with such concepts as "essentially fictitious," Bailey v. Patterson, 369 U. S., at 33; "wholly unsubstantial," ibid.; "obviously frivolous," Hannis Distilling Co. v. Baltimore, 216 U. S. 285, 288 (1910); and "obviously without merit," Ex parte Poresky, 290 U. S. 30, 32 (1933). The limiting words "wholly" and "obviously" have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U. S. C. § 2281. A claim is insubstantial only if "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy." Ex parte Poresky, *supra*, at 32, quoting from Hannis Distilling Co. v. Baltimore, *supra*, at 288; see also Levering & Garriques Co. v. Morrin, 289 U. S. 103, 105-106 (1933); McGilvra v. Ross, 215 U. S. 70, 80 (1909). Goosby v. Osser, 490 U. S. 512, 518 (1973).

"The substantiality doctrine as a statement of jurisdictional principles affecting the power of a federal court to adjudicate constitutional claims has been questioned, Bell v. Hood, 327 U. S.

678, 683 (1946), and characterized as 'more ancient than analytically sound,' Rosado v. Wyman, supra, at 404. But it remains the federal rule and needs no re-examination here, for we are convinced that within accepted doctrine petitioners' complaint alleged a constitutional claim sufficient to confer jurisdiction on the District Court to pass on the controversy." 415 U.S. 537-538.

The Supreme Court does not appear to have ruled on any issues substantially the same as the ones presented by plaintiff in this appeal.

Plaintiff respectfully submits that he has alleged several substantial meritorious federal questions, none of which are unsound based on any previous decisions of the Supreme Court. Also, plaintiff requests equitable relief in his amended complaint, viz., a permanent injunction against enforcement of the statutes.

II

THE PARKING VIOLATIONS BUREAU IS AN ILLEGAL COURT
AND VIOLATES THE DOCTRINE OF SEPARATION OF POWERS AND
THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT; IS REPUGNANT TO
THE FULL FAITH AND CREDIT CLAUSE; AND IS A BURDEN
ON INTERSTATE COMMERCE

The PVB is an illegal and unconstitutional court hiding behind the facade of a constitutional court, while at the same time the latter specifically disavows the activities, including the "judgments", of the PVB. It is a revenue-producing agency set up by the New York State Legislature under the guise of a court and empowered without standards or criteria to assess outrageous fines and penalties under the cloak of judicial respectability. As such, it violates the doctrine of separation of powers inasmuch as it was given the authority to "render" and "enforce" its own "judgments" "without court proceedings".

Millions of these "judgments" are allegedly rendered and entered yearly. These "judgments" are in turn enforceable in other states of the United States through the agency of the Full Faith and Credit Clause. In addition, the PVB is the same agency which having itself defined the offense to be prosecuted as well as the penalty to be affixed adjudges guilt or innocence through one or more of its own agents.

This combination of (a) denial of due process, (b) violation of the doctrine of separation of powers, (c) enforcement of default judgments through the Full Faith and Credit Clause, and (d) the imposition of a substantial burden on interstate commerce is, plaintiff contends, a substantial federal issue.

As noted by the Supreme Court of the United States in Wong Wing v. United States, 163 U.S. 228, 237 (1896):

"It is not consistent with the theory of our government that the legislature should after having defined an offense as an infamous crime find the fact of guilt and adjudge the punishment by one of its own agents."

The powers of the judiciary under the doctrine of separation of powers are confined to the performance of judicial functions. Matter of Richardson, 247 N.Y. 401 (1928). As stated by Judge Cardozo in that case:

"...Nowhere has the doctrine thus established been applied more steadily or forcefully than in the courts of New York. ... The function of the judges 'is to determine controversies between litigants' ... They are not adjuncts or advisers, much less investigating instrumentalities, of other agencies of government. Their pronouncements are not subject to review by Governor or Legislature ... They speak 'the rule or sentence.'" 247 N.Y. 411.

In this connection see "Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers", 49 Tulane L. Rev.

84 (1974), which deals with the impact of parking violations tribunals on due process and the doctrine of separation of powers at the state and federal levels. See also Ward v. Village of Monroeville, supra, Tuney v. Ohio, supra, American Cyanamid Co. v. FTC, 363 F.2d 757 (6th Cir. 1966); NLRB v. Phelps, 136 F.2d 562 (5th Cir. 1943); Taylor v. New York City Transit Authority, 309 F.2d 785 (E.D.N.Y. 1970); and Frausto v. Brownell, 140 F. Supp. 660 (S.D. Cal. 1956).

A recent case, relating to default judgments, is United States v. Brand Jewelers, Inc., 318 F. Supp. 1293 (S.D.N.Y. 1970), where the court held that the United States could maintain an action under the interstate commerce clause to end widespread deprivations of property through "state action" without due process of law. In this case, the government sought injunctive and other civil remedies for an allegedly long-standing and systematic practice by defendants of obtaining default judgments against economically-disadvantaged defendants by means of a technique known as "sewer service". The denials of due process were so substantial that the court ruled that the United States had standing to sue.

Due process and equal protection questions arising under the two New York statutes were discussed in "Unburdening the Criminal Courts? New York City's Parking Violations Bureau", 7 Col. J. of Law & Soc. Probs 447 (January 21, 1975).

The problems faced by plaintiff and millions of others are a direct result of the violations of these constitutional safeguards. The PVB procedures are presently creating havoc with the judicial system in the

State of New York. Its "judgments" are now being docketed as liens in the County Clerk's Offices in New York City (47) which affects title to real property (including the title to plaintiff's own residence in Queens) and has extra-territorial effect. The "judgments" are "rendered" and "re-rendered", so that a judgment debtor such as plaintiff is truly unable to ascertain how much he really owes, nor can the PVB produce this information even when it was directed to do so by the court below. Twenty years from now the consequences for property owners in New York City will be disastrous, particularly because the Civil Court itself does not even have the documents to show against whom the "judgments" have been entered (is it father or son having the same name?) or the basis for the entry of such judgments. In short, the Civil Court has been converted into nothing more than a storage area for computer print-outs of an illegal court, if in fact they are even filed in the Civil Court. The power of the Civil Court is being ruthlessly exploited by an administrative agency through the issuance of property executions and the institution of other enforcement procedures against alleged traffic law violators in the name of the Civil Court. The foregoing is a massive erosion of safeguards to the individual which the court system traditionally provides leading inevitably to an undermining of public confidence in those same courts and in the rule of law.

III

THE SYSTEMATIC FAILURE BY THE PVB TO ENTER DEFAULT
JUDGMENTS IN CONFORMITY WITH THE CPLR IS IN ITSELF
A MASSIVE DENIAL OF DUE PROCESS

Plaintiff argued below that the PVB constitutionally could not be given judicial power under the constitutional doctrines of due process and separation of powers to "render" a default judgment within the applicable 2-year statute of limitations prescribed by the statutes in question. Plaintiff further argued that, in any event, such "judgments" were procedurally unenforceable and themselves a massive violation of due process because not in conformity with provisions of the CPLR and Civil Court rules applicable to civil judgments entered in the Civil Court, i.e., the rendering and entry of judgments, the creation and filing of judgment rolls, affidavits of non-military service.

Section 5011 of the CPLR, entitled "Definition and content of judgment", provides in part:

"A judgment is the determination of the rights of the parties in an action or special proceeding and may be either interlocutory or final. A judgment shall refer to, and state the result of, the verdict or decision, or recite the default upon which it is based." (Emphasis supplied.)

The PVB in the District Court below failed to produce any documents which comply with the foregoing definition.

Defendants cannot correct their errors at this time under § 5019(a) of the CPLR, which is limited to "clerical errors or a mistake in the entry of the judgment or the omission of a right or relief to which a party is entitled as a matter of course." See 5 Weinstein, Korn & Miller ¶ 5011.05 and footnotes 19 and 20. "If the defect in the judgment is more fundamental,

relief may be obtained under CPLR 5015(a) if one of the grounds therefor can be established." 5 Weinstein, Korn & Miller ¶ 5011.05.

Rule 5016 of the CPLR, entitled "Entry of judgment", states in part:

"(a) What constitutes entry. A judgment is entered when, after it has been signed by the clerk, it is filed by him."

Section 883a-7.0 of Title A of Chapter 40 of the New York City Administrative Code (the "NYC Code") states in part:

"In no case shall a default judgment be rendered or, where required, a notice of impending default judgment be sent, more than two years after the expiration of the time prescribed for entering a plea or making an appearance."

Section 241.2 of the New York Vehicle and Traffic Law (the "NY V&TL") has deleted the last 4 words of the above quotation.

Plaintiff claims that there are no "judgments" in accordance with the definition thereof in the CPLR. What defendants would like to have the Court believe are "judgments" are in fact no more than computer print-outs which fail miserably in meeting the requirements of the CPLR and have therefore not in any sense of the imagination been "rendered" in accordance with the statutes above.

Even if the "judgments" against plaintiff have been "rendered", they clearly have not been entered, under Rule 5016 of the CPLR and, therefore, have no legal effect. 5 Weinstein, Korn & Miller ¶ 5016.04 states in part:

"Although there is no requirement that the judgment be entered within a specified time after the verdict or decision has been rendered, the judgment-roll cannot be filed nor can docketing take place until it is. See the discussion under CPLR 5017, 5018. Failure to file the judgment-roll and to docket the judgment will, in turn, prevent both the enforcement of the judgment and the accrual of the judgment lien on the debtor's real property. *** The entry of judgment also is of importance in connection with taking an appeal."

In the case of a default judgment, however, no default judgment can be entered later than 1 year after the default without order of the Court.

CPLR 3215(c). 3 Weinstein, Korn & Miller ¶ 3215.13 states in part:

"CPLR 3215(c) is substantially the same as the first subdivision of former Rule of Civil Practice 302, which was enacted in 1947 upon the recommendation of the Judicial Council to prevent plaintiffs from unreasonably delaying the termination of an action. Before its enactment, a plaintiff could delay entering a default judgment indefinitely, except in the rare case where the court exercised its inherent power to dismiss a complaint for lack of prosecution. Defendants were misled because they frequently misconstrued a plaintiff's inaction as a tacit abandonment of the claim; proof was often unavailable because of the passage of time."

3 Weinstein, Korn & Miller ¶ 3215.03 further explains:

"The purpose of the one-year limitation is to assure court review of all cases in which there has been a delay of more than one year in entering a default, for unless such delay is excused the non-defaulting party, instead of recovering a default judgment, will suffer a dismissal of his claim as abandoned. It is part of the scheme for implementing the policy of subdivision (c) -- formerly rule 302(1) of the Rules of Civil Practice -- of preventing unreasonable delay in the entry of defaults."

Notwithstanding the 2-year period in which the PVB is required to "render" a judgment, CPLR 3215 should be applied to limit the entry of default judgments against plaintiff and the other members of the class to a 1-year period after the default. The computer print-outs produced by the defendants reveal instances in which plaintiff had been issued tickets more than a year before a default judgment was allegedly taken by the PVB, in apparent violation of CPLR 3215 (77). This would have been prevented if defendants had complied with the requirements of § 3215(e) requiring an affidavit as to the default.

The required entry of judgments against plaintiff could not have occurred because the PVB never complied with R 5017 of the CPLR, which requires:

"(a) Preparation and filing. A judgment-roll shall be prepared by the attorney for the party at whose instance the judgment is entered or by the clerk. It shall be filed by the clerk when he enters judgment, and shall state the date and time of its filing.

"(b) Content. The judgment-roll shall contain the summons, pleadings, admissions, each judgment and each order involving the merits or necessarily affecting the final judgment. If the judgment was taken by default, it shall also contain the proof required by subdivision (e) of section 3215 and the result of any assessment, account or reference under subdivision (b) of section 3215."

The facts show that the PVB has not met the requirements under R 5017, CPLR, and, therefore, could not have entered any judgments against plaintiff or any other members of the class alleged by plaintiff.

In fact, the PVB has not even attempted to meet the basic requirements of a judgment. 5 Weinstein, Korn & Miller ¶ 5011.04 states in part as follows:

"The second and third sentences of CPLR 5011 prescribe the contents of the judgment. The second sentence requires the judgment to refer to and state the result of the verdict or decision, or recite the default upon which it is based. Thus, the judgment must state the relief granted or the disposition of the action. As stated in one case, in 'order to avoid unnecessary confusion, a judgment should express its true legal effect and the precise relief awarded.' And, according to one writer:

"No particular form of words is usually considered necessary to show the rendition of a judgment. The record of the judgment is sufficient if the time, place, parties, matter in dispute, and the result, with the relief granted, are clearly."

Nor has the PVB attempted to comply with the requirements of § 2900.18 of the Rules of the Civil Court of the City of New York (the court which the

PVB unlawfully pretends to be). This section states in part as follows:

"§ 2900.18 Defaults; Where a Defendant Fails to Answer

* * *

"(d) In the event that an individual defendant defaults in answering, there shall be submitted to the clerk, in addition to the requirements of subdivision (a) or (b) of this Rule, an affidavit which shall set forth whether or not the defendant is in the military service; unless such affidavit shall be based on personal knowledge, the affidavit shall set forth the source of the information so secured."

The long-standing and systematic practice of obtaining default judgments without conforming to the CPLR and Civil Court rules is a substantial denial of due process within the meaning and spirit of United States v. Brand Jewelers, Inc., supra.

IV

USING A POLICE POWER TO RAISE SUBSTANTIAL
REVENUES IS A DENIAL OF DUE PROCESS UNDER
THE 14TH AMENDMENT

The assessment and collection of fines and penalties can be the proper exercise of the police power of the state. But it can also be a means of taxation, when the amount raised through the assessment and collection of fines and penalties bears no reasonable relationship to the cost of enforcement of the police power in question. See Automobile Club of Missouri v. St. Louis, 334 S.W.2d 355, 83 A.L.R.2d 612 (1960) and Matter of Freidus v. Leary, 66 Misc.2d 70 (Spec. Term, N.Y.Co. 1971), reversed on other grounds, 38 A.D.2d 919 (1972), aff'd 32 N.Y.2d 869 (1973), relating to the

\$75 penalty assessed for the towing of illegally-parked automobiles by New York City. The court said in part:

"The penalty cannot ... be raised arbitrarily to whatever figure would discourage the brashest and most foolhardy parker. 'Excessive fines' are constitutionally prohibited (U.S. Const., 8th Amdt.; N.Y. Const., art. I, §5). A maximum fine is set for traffic infractions and parking violations. (Vehicle and Traffic Law, § 1800; New York City Charter, § 883, subd. (a); Administrative Code of City of N.Y., § 883a-3.0, subd. b.) The actual parking fine which can be imposed is limited by law. The question posed in this case is whether the additional \$50 charged for an illegally parked vehicle, beyond the stated fine, is, in fact, a penalty in disguise, imposed by the city beyond its authorized powers and to evade the limitation, or whether it is a reasonable charge for the actual expenses of removal of a vehicle blocking its streets." 66 Misc.2d 72.

By allowing the PVB to establish fines and penalties without being limited to an approximation of the expenditures in enforcement and collection, the statutes authorize the raising of revenues by New York City and other cities throughout the state. This is a power to tax. See discussion in "The Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers", 49 Tulane L. R. 117, n. 126 (1974).

The use of a police power as a taxing device is a denial of due process in the taking of the property of the parking-law violators, because it has no reasonable relationship to the exercise of the police power. Furthermore, the stepped-up penalties or fees cannot be related to the enforcement of the police power because the parking offense has been terminated days or weeks before assessment of the stepped-up penalty or fee. See cases cited in the annotation to Automobile Club of Missouri v. St. Louis, 334 S.W.2d 355, 83 A.L.R.2d 612 (1960).

V

THE STEPPED-UP PENALTIES FOR DELAYED PAYMENT
OF TRAFFIC TICKETS IS A DENIAL OF EQUAL
PROTECTION AND DUE PROCESS; AND IS THE
IMPOSITION OF EXCESSIVE FINES

The two statutes in question authorize the New York City PVB to assess added penalties or fees in the event a person charged with a parking violation fails to appear and fails to pay the basic fine levied for the parking violation itself, within the short period of time required for payment under rules or regulations promulgated by the PVB.

The provisions of § 883a-7.0 (entitled "Judgments") of the NYC Code (enacted for New York City in 1969 by the New York State Legislature) states in part as follows:

"Pleas entered or appearances made within the period shall be in the manner prescribed in the notice and subject to such additional penalty or fee as the bureau may by rule or regulation determine."

Section 241.2 of the NY V&TL has the same provision, essentially, as follows:

"Pleas entered within that period shall be in the manner prescribed in the notice and subject to such additional penalty or fee as the bureau may by rule or regulation determine."

The two statutes make numerous other references to "fines" and "penalties", which shows that the statutory scheme for "penalties" is separate and apart from "fines" for the parking violation itself. See § 237.2, § 237.3, § 237.7, § 239.2.b and § 239.2.c of the NY V&TL; also, see § 883a-3.0b, § 883a-3.0c, § 883a-3.0g and § 883a-5.0c of the NYC Code. (Section 239.2.b of the NY V&TL has no counterpart provision in the NYC Code.)

The main purpose of paying fines through a traffic violations bureau appears to be as stated in Long v. Macduff, 284 App. Div. 61, 131 N.Y.S.2d 718 (Sup. Ct. 1954):

"The purpose of law authorizing traffic violations bureau is to save the time of a motorist who has been charged with a minor violation of a traffic ordinance by permitting him to appear in person or by agent at the bureau and pay a prescribed fine for the offense and, in writing, waive hearing in court, plead guilty to the charge and authorize the person in charge of the bureau to make such plea and pay such fine in court."

It is not reasonable that this type of an administrative procedure should have been set up with the idea that it would serve as a means of classification upon which to base a penalty that would be applicable to a person depending on whether he defaulted or not. Classifications must be made with reference to the act or acts which constitute the violation(s) and not with reference to matters wholly unconnected with the violation(s). State v. Johnsey, 46 Okl. Cr. 233, 287 Pac. 729 (1930); Berger v. City and County of Denver, 350 Pac.2d 192 (Colo. 1960), in which the court held that to have two sets of penalties for parking meter violations applicable to the same offense, depending on whether the defendant contested his guilt, was a denial of equal protection of the laws. See "Municipal Corporations: Validity of Greater Fine than Minimum for Failure to Respond Promptly to Traffic Tickets", 14 Okl. L.R. 543 (1961), which said in part:

"The majority of cases have come to the same conclusion as reached by this court: that all people must be governed by same rules of law. If there is a classification, it should be one proportioned to the gravity of the offense committed, and it must be a classification made reasonably and not arbitrarily."

Parenthetically, the penalties are contemplated to be so onerous to parking violators, that rental and leasing companies (e.g., Hertz and Avis), under certain circumstances, are exempted by the two statutes from

paying penalties in excess of the scheduled fines, which raises a substantial issue of denial of equal protection by itself. See § 239.2.b and § 239.2.c of the NY V&TL and § 883a-5.0c of the NYC Code.

Section 239.2.b of the NY V&TL provides:

"Notwithstanding any inconsistent provisions of this article or of any other provision of law, any person, corporation, firm, agency, association or organization that is the renter or lessor of a vehicle shall not be liable for penalties in excess of the scheduled fines imposed pursuant to this article if upon an appropriate fixing of liability upon said renter or lessor there be due and timely payment made of all scheduled fines."

A person who parks illegally in New York City, receives a parking ticket, then pays the ticket promptly, pays a fine amounting to \$10-25, depending on the location of the violation. Another person obtaining a parking ticket at the same time and same location, but who fails to pay the fine promptly, is assessed an additional "penalty", from \$5 to \$25 (depending solely on the length of the delay in payment of the fine). Thus, for the same parking violation, the first person pays a fine of \$10-25, while the other person pays an aggregate fine and penalty of \$35-50. This difference amounts to a denial of equal protection of the laws for the second person.

Each of the persons should pay the same amount of fines and/or penalties. Any delay in payment by the second person should be reflected by imposition of an interest charge, possibly, but not a penalty. The violation itself is over when the car is removed from the parking place, days or weeks before assessment of the penalty. The inability to pay a fine is not a punishable offense under law, and any attempt to fine a person for non-payment of a fine is an unconstitutional fine or penalty for being broke, which many of the person are who receive traffic tickets in New York City.

The statutes should have provided, perhaps, for the payment of reasonable interest charges during non-payment of the fine for the parking violation itself. But to charge a \$25 penalty for, say, three months of delayed payment of the fine is comparable to an "interest" charge of one thousand percent (1,000%) per annum on a \$10 fine.

This is an excessive fine; the taking of a person's property (the \$25) without due process of law; and a denial of equal protection of the laws (herein, the right to pay no more than a \$10 fine plus reasonable interest). See Beckler Produce Company, Appt. v. American Railway Express Company, 156 Ark. 296, 246 S.W. 1, 26 A.L.R. 1197 (1922).

The stepped-up penalties of which plaintiff complains cannot be cost-justified because of the comparatively short period in which the maximum \$25 penalty accrues -- perhaps 3 months. Therefore, it is obvious that there has been no attempt by the PVB to allocate the \$25 maximum penalty to the persons falling into those categories of persons with respect to whom the PVB incurs the greatest costs of collection, and the result is invidious discrimination against the persons who pay the \$25 shortly after assessment thereof.

In Sturges & Burn Mfg. Co. v. Pastel, 301 Ill. 253, 133 N.E. 762 (1921), the court held that a statutory grant of immunity from imprisonment for non-payment of judgments to defendants who default, plead guilty, or confess judgment, while imposing imprisonment for such non-payment on unsuccessful defendants who have insisted on or waived a jury trial, was a violation of the Due Process Clause and Equal Protection Clause.

In Marder v. Massachusetts, 377 U.S. 407 (1964), the Supreme Court said there was no substantial federal question when a statute permitted an alleged violator of parking laws to elect to be treated under a civil or a criminal procedure, when the fines and/or penalties differed between the two procedures (but were consistent within each of the two procedures). The amounts of money (\$3) were small on one hand, but more importantly the high cost of a criminal proceeding seems to have justified this result. But this Marder case is totally inapposite to the issues involving plaintiff. There is only a single (civil) procedure -- involving the lower cost method of enforcement. Yet, the New York City PVB is extracting the higher (criminal) penalties and fines in its unconstitutional scheme of taxation and revenue raising. What is worse, the PVB assesses these outrageously high fines and penalties in what is obvious invidious and unconstitutional discrimination. Furthermore, plaintiff is being required to pay added penalties based solely on the passage of time, unrelated to reasonable interest or added costs attributable to any delay in payment during the period of step-up. It should be noted that in People v. Carter, 325 N.Y.S.2d 772 (Oneida County Ct. 1971), relied upon by defendants, the Court therein specifically excluded from consideration the question whether the increase in the fine after the lapse of 72 hours based solely upon a time element was valid.

VI

ASSESSMENT OF "PENALTIES" IN AN AMOUNT AND AS TO OFFENSES OR INFRACTIONS TO BE DETERMINED BY THE PARKING VIOLATIONS BUREAU WITHOUT CRITERIA FROM THE LEGISLATURE IS AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY

Neither § 241.2 of the NY V&TL nor subsection "b" of § 883a-7.0 of the NYC Code or any other provisions thereof establish any criteria or

standards for the "additional penalty or fee" which "the bureau may by rule or regulation determine". Nor do the statutes even say to what offenses or infractions the penalties are to be applied.

As a result, the PVB is delegated the legislative function of establishing offenses and penalties, in violation of the Due Process Clause of the 14th Amendment.

In People v. Grant, 242 App. Div. (3rd Dept. 1934), the court said:

"While the legislature may delegate the power to make rules and regulations and give them the force and effect of law, it may not delegate the power to create crimes and prescribe the penalties therefor. The declaration of the crime and the prescription of the penalty for the violation rest in the ultimate discretion of the Legislature." (242 App. Div. 312.)

In Automobile Club of Missouri v. St. Louis, 334 S.W.2d 355, 83 A.L.R.2d 612 (Mo. Sup. Ct., Div. 2, 1960), the court held that municipal ordinances authorizing a parking-meter commission to fix the parking fees to be charged, without establishing a satisfactory criterion or standard to guide the commission, was an unconstitutional delegation of legislative power to an administrative body. The court said, in part:

"... Other than the vague phrase 'in accordance with public convenience and necessity,' no standards, guides or criterion are set out for the commission to follow in determining the particular fee to be charged within the minimum and maximum amount. Certain violations are made a misdemeanor, and if this ordinance is valid, the mere decision of an administrative board as to fee to be paid, unguarded by legislatively established standards, would support conviction. As we have said, the fixing of the parking meter fee is a legislative function. Delegation of this function without adequate criterion or standards is unlawful. We note, also, that the ordinance fails to contain any method or criterion for establishing and locating the different time zones it otherwise contemplates. This ordinance is invalid as an unlawful attempt to delegate legislative authority to an administrative board." 83 A.L.R.2d 619-20.

Under "Briefs of Counsel", at p. 615-6, the annotation cited a string of state decisions for the following legal argument:

"The parking-meter ordinances constitute an unlawful delegation of legislative authority; the fixing of fees is a legislative function which cannot be delegated without specific standards to guide the administrative body." p. 616.

In Panama Refining Co. v. Ryan, 293 U.S. 388, 79 L.Ed. 446 (1935), the Supreme Court held that a portion of the National Industrial Recovery Act was an unconstitutional delegation of legislative powers, saying in part:

"... The Court has recognized that there are limits of delegation which there is no constitutional authority to transcend. We think that § 9 (c) goes beyond those limits. As to the transportation of oil production in excess of state permission, the Congress has declared no policy, has established no standard, has laid down no rule. There is no requirement, no definition of circumstances and conditions in which the transportation is to be allowed or prohibited.

"If § 9 (c) were held valid, it would be idle to pretend that anything would be left of limitations upon the power of Congress to delegate its law-making function. * * * The question is not of the intrinsic importance of the particular statute before us, but of the constitutional processes of legislation which are an essential part of our system of government." (293 U.S. 430)

See also State ex rel. Lanier v. Vines, 164 S.E.2d 161 (N.C. 1968).

For New York State to deny this essential part of our system of government, by delegation of legislative authority to establish penalties and offenses relating to parking, without any legislative guide whatever, is a denial of due process, a violation of the 14th Amendment.

Accordingly, both statutes are unconstitutional in their entirety.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed in its entirety and

- (a) a three-judge court should be convened (or the Second Circuit should act as a three-judge court) to determine the constitutionality of the two statutes, or, in the alternative,
- (b) the case should be remanded to the District Court for further pre-trial proceedings.

New York, New York
May 30, 1975

Respectfully submitted,

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VEHICLE AND TRAFFIC

§ 236

ARTICLE 2-B—ADJUDICATION OF PARKING
INFRACTIONS [NEW]

- Sec.
 235. Jurisdiction.
 236. Creation, personnel.
 237. Functions, powers and duties.
 238. Notice of violation.
 239. Ownership and operation of vehicles, liability.
 240. Hearings, notice and conduct.
 241. Final determinations, judgments.
 242. Administrative review.
 243. Judicial review.
 244. Separability.

§ 235. Jurisdiction

Notwithstanding any inconsistent provision of any general, special or local law or administrative code to the contrary, in any city which heretofore or hereafter is authorized to establish an administrative tribunal to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations, such tribunal and the rules and regulations pertaining thereto shall be constituted in substantial conformance with the following

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 236. Creation, personnel

1. Creation. In any city as hereinbefore or hereafter authorized such tribunal when created shall be known as the parking violations bureau and shall have jurisdiction of traffic infractions which constitute a parking violation. For the purposes of this article, a parking violation is the violation of any law, rule or regulation providing for regulating the parking, stopping or standing of a vehicle. In addition for purposes of this article, "commissioner" shall mean and include the commissioner of traffic of the city or an official possessing authority as such a commissioner.

2. Personnel. a. The head of such bureau shall be the director, who shall be appointed by the commissioner. The director may exercise or delegate any of the functions, powers and duties conferred upon him or the bureau by the commissioner to any qualified officer or employee of the bureau.

b. The commissioner may appoint such number of deputy directors as he shall deem necessary, but in no event to exceed four and may employ such officers and employees as may be required to perform the work of the bureau, within the amounts available therefor by appropriation.

c. The commissioner shall appoint supervising hearing examiners not to exceed six in number and senior hearing examiners, not to exceed six in number. Every supervising hearing examiner shall have been admitted to the practice of law in the state for at least seven years and every senior hearing examiner for at least six years. The duties of each supervising hearing examiner and senior hearing examiner shall include, but not be limited to: (1) presiding at hearings for the adjudication of charges of parking violations; (2) the supervision and administration of the work of the bureau; and (3) membership on the appeals board of the bureau, as herein provided.

d. The commissioner shall appoint hearing examiners who shall preside at hearings for the adjudication of charges of parking violations. Hearing examiners shall be appointed and shall serve for such number

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of sessions as may be determined by the commissioner and shall receive therefor, such remuneration as may be fixed. Such hearing examiners shall not be considered employees of the city in which the administrative tribunal has been established. Every hearing examiner shall have been admitted to the practice of law in this state for a period of at least five years, and shall be appointed from a list of eligible candidates who have satisfied the standards established by a duly constituted committee of the bar association of the county in which the city is located or, the association of the bar of that city.

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 237. Functions, powers and duties

The parking violations bureau shall have the following functions, powers and duties:

1. To accept pleas to, and to hear and determine, charges of parking violations;
2. To provide for penalties other than imprisonment for parking violations in accordance with a schedule of monetary fines and penalties, provided however, that monetary penalties shall not exceed fifty dollars for each parking violation;
3. To adopt rules and regulations not inconsistent with any applicable provision of law to carry out the purposes of this article, including but not limited to rules and regulations prescribing the internal procedures and organization of the bureau, the manner and time of entering pleas, the conduct of hearings, and the amount and manner of payment of penalties;
4. To issue subpoenas to compel the attendance of persons to give testimony at hearings and to compel the production of relevant books, papers and other things;
5. To enter judgments and enforce them, without court proceedings, in the same manner as the enforcement of money judgments in civil actions in any court of competent jurisdiction or any other place provided for the entry of civil judgment within the state of New York;
6. To compile and maintain complete and accurate records relating to all charges and dispositions and to prepare complete and accurate transcripts of all hearings conducted by the bureau and to furnish such transcripts to the person charged at said person's own expense upon timely request, and upon said person complying with the regulations of the bureau;
7. To remit to the finance administrator or other appropriate finance officer, on or before the fifteenth day of each month, all monetary penalties or fees received by the bureau during the prior calendar month, along with a statement thereof, and, at the same time, to file duplicate copies of such statement with the comptroller;
8. To answer within a reasonable period of time all relevant and reasonable inquiries made by a person charged with a parking violation or his attorney concerning the notice of violation served on that person. The bureau must also furnish within a reasonable period of time to the person charged on his request, and upon complying with the regulations of the bureau, a copy of the original notice of violation including all information contained thereon. Failure by the bureau to comply with the provisions of this subdivision or any part of the provisions of this subdivision, within seventy-five days of such inquiry, forwarded to the bureau by certified or registered mail, return receipt requested, will result, upon the request of the person charged, in an automatic dismissal of all charges relating to and only to that notice of violation to which the inquiry was made;
9. To prepare and issue a notice of violation in blank to members of the police department, the fire department, the traffic department

and to other officers as the bureau by regulation shall determine. The notice of violation or duplicate thereof, when filled in and sworn to or affirmed by such designated officers, and served as provided in this article, shall constitute notice of the parking violation charged.

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 238. Notice of violation

1. The notice of violation shall contain information advising the person charged of the manner and the time in which he may plead either guilty or not guilty to the violation alleged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon. The form and wording of the notice of violation shall be prescribed by the director. A duplicate of each notice of violation shall be served on the person charged in the manner hereinafter provided. The original or a facsimile thereof shall be filed and retained by the bureau, and shall be deemed a record kept in the ordinary course of business, and shall be prima facie evidence of the facts contained therein.

2. A notice of violation shall be served personally upon the operator of a motor vehicle who is present at the time of service, and his name, together with the plate designation and the plate type as shown by the registration plates of said vehicle and the expiration date; the make or model, and body type of said vehicle, shall be inserted therein. The notice of violation shall be served upon the owner of the motor vehicle if the operator is not present, by affixing such notice to said vehicle in a conspicuous place. Whenever such notice is so affixed, in lieu of inserting the name of the person charged with the violation in the space provided for the identification of said person, the words "owner of the vehicle bearing license" may be inserted to be followed by the plate designation and plate type as shown by the registration plates of said vehicle together with the expiration date; the make or model, and body type of said vehicle. Service of the notice of violation, or a duplicate thereof by affixation as herein provided shall have the same force and effect and shall be subject to the same penalties for disregard thereof as though the same was personally served with the name of the person charged with the violation inserted therein.

3. For purposes of this section, an operator of a vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied, shall be deemed to be the agent of such owner to receive notices of violation, whether personally served on such operator or served by affixation in the manner aforesaid, and service made in either manner as herein provided shall also be deemed to be lawful service upon such owner.

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 239. Ownership and operation of vehicles, liability

1. Definitions. a. Whenever used in this article, the term "owner" shall mean any person, corporation, firm, agency, association, or organization having the property or title to a vehicle used or operated in such city; or any registrant of a vehicle used or operated in such city; or any person, corporation, firm, agency, association, or organization engaged in the business of renting or leasing vehicles to be used or operated in such city, and hereinafter referred to as the renter or lessor.

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h. Whenever used in this article, the term "operator" means any person, corporation, firm, agency, association or organization that uses or operates a vehicle with or without the permission of the owner, and an owner who operates his own vehicle.

2. Liability. a. The operator of a vehicle shall be primarily liable for the penalties imposed pursuant to this article. The owner of the vehicle, even if not the operator thereof, shall also be liable therefor, if such vehicle was used or operated with his permission, express or implied, but in such case, the owner may recover any penalties paid by him from the operator.

b. Notwithstanding any inconsistent provisions of this article or of any other provision of law, any person, corporation, firm, agency, association or organization that is the renter or lessor of a vehicle shall not be liable for penalties in excess of the schedule fines imposed pursuant to this article if upon an appropriate fixing of liability upon said renter or lessor there be due and timely payment made of all scheduled fines.

c. A renter or lessor of a vehicle shall not be liable for penalties imposed pursuant to this article if at the time the notice of violation or a duplicate of such notice is served, the registration plate number of the vehicle for which said notice of violation or duplicate was served and the address of the renter or lessor has been filed by the renter or lessor with the bureau and notice of the service of a notice of violation or a duplicate of such notice for a parking violation has not been given to the renter or lessor by the bureau within ninety days after such service. Such notice shall be given by ordinary mail to the address on file with the bureau.

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 240. Hearings, notice and conduct

1. Notice of hearing. Whenever a person charged with a parking violation enters a plea of not guilty, the bureau shall advise such person personally by such form of first class mail as the director may direct of the date on which he must appear to answer the charge at a hearing. The form and content of such notice of hearing shall be prescribed by the director, and shall contain a warning to advise the person so pleading that failure to appear on the date designated, or on any subsequent adjourned date, shall be deemed an admission of liability, and that a default judgment may be entered thereon.

2. Conduct of hearings. a. Every hearing for the adjudication of a charge of parking violation shall be held before a hearing examiner in accordance with rules and regulations promulgated by the bureau.

b. No charge may be established except upon proof by substantial evidence.

c. The hearing examiner shall not be bound by the rules of evidence in the conduct of the hearing, except rules relating to privileged communications.

d. The hearing examiner shall at the request of the person charged on a showing of good cause and need therefor, or in his own discretion, issue a subpoena to compel the appearance at a hearing of the officer who served the notice of violation or of other persons to give testimony, and may issue a subpoena duces tecum to compel the production for examination or introduction into evidence, of any book, paper or other thing relevant to the charges.

e. In the case of a refusal to obey a subpoena, the bureau may make application to the Supreme Court pursuant to section twenty-three hundred eight of the civil practice law and rules, for an order requiring such appearance, testimony or production of evidence.

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f. The hearing examiner shall not examine the prior violation record of a person charged before making a determination.

g. A record shall be made of a hearing on a plea of not guilty. Recording devices may be used for the making of the record.

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 241. Final determinations, judgments

1. The hearing examiner shall make a determination on the charges, either sustaining or dismissing them. Where the hearing examiner determines that the charges have been sustained he may examine the prior parking violations record of the person charged prior to rendering a final determination. Final determinations sustaining or dismissing charges shall be entered on a final determination roll maintained by the bureau together with records showing payment and nonpayment of penalties.

2. Where an operator or owner fails to enter a plea to a charge of a parking violation or fails to appear on a designated hearing date or subsequent adjourned date or fails after a hearing to comply with the determination of a hearing examiner, as prescribed by this article or by rule or regulation of the bureau, such failure to plead, appear or comply shall be deemed, for all purposes, an admission of liability and shall be grounds for rendering and entering a default judgment in an amount provided by the rules and regulations of the bureau. However, after the expiration of the original date prescribed for entering a plea and before a default judgment may be rendered, in such case the bureau shall pursuant to the applicable provisions of law notify such operator or owner, by such form of first class mail as the commission may direct; (1) of the violation charged, (2) of the impending default judgment, (3) that such judgment will be entered in the Civil Court of the city in which the bureau has been established, or other court of civil jurisdiction or any other place provided for the entry of civil judgments within the state of New York, and (4) that a default may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. Pleas entered within that period shall be in the manner prescribed in the notice and subject to such additional penalty or fee as the bureau may by rule or regulation determine. Such notice of impending default judgment shall not be required prior to the rendering and entry thereof in the case of operators or owners who are non-residents of the state of New York. In no case shall a default judgment be rendered or, where required, a notice of impending default judgment be sent, more than two years after the expiration of the time prescribed for entering a plea.

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 242. Administrative review

1. There shall be an appeals board within the bureau which shall consist of three or more hearing examiners but in no event shall the hearing examiner from whose decision the appeal is taken be included in the panel determining said appeal.

2. An appeal from a determination of any hearing examiner after a hearing on a plea denying liability, or from a determination denying a motion to reopen any matter shall be submitted to the appeals board, which shall have power to review the facts and the law, and shall have power to reverse or modify any determination appealed from for error of fact or law.

3. A party aggrieved by the final determination of a hearing examiner may obtain a review thereof by serving, either personally in

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writing or by certified or registered mail, return receipt requested, upon the bureau, within thirty days of the entry of such final determination, a notice of appeal setting forth the reasons why the final determination should be reversed or modified. Upon receipt of such notice of appeal, the bureau shall furnish to the appellant, at his request and at his own expense, a transcript of the original hearing. No appeal shall be conducted less than ten days after the mailing of the transcript to the appellant or his attorney.

4. Appeals shall be conducted in the presence of the appellant or his attorney or both, if such right of appearance is expressly requested by the appellant in his notice of appeal and upon his complying with the regulations of the bureau. If the appellant elects to appear, the bureau within thirty days after the receipt of the notice of appeal shall advise the appellant, either personally or by ordinary first class mail of the date on which he shall appear. No appeal shall be conducted less than ten days after the mailing of such notification. The appellant shall be notified in writing of the decision of the appeals board.

5. The service of a notice of appeal shall not stay the enforcement of a judgment upon the determination appealed from unless the appellant shall have posted a bond in the amount of such determination, at the time of, or before the service of such notice of appeal unless the enforcement of such judgment shall have been stayed by the appeals board.

Added L 1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 243. Judicial review

The order of the appeals board shall be the final determination of the bureau. Judicial review may be sought pursuant to article seventy-eight of the civil practice law and rules.

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

§ 244. Separability

If any provision of this article or the application of such provision to any person or circumstances shall be held unconstitutional or invalid, the constitutionality or validity of the remainder of this article and the applicability of such provision to other persons or circumstances shall not be affected thereby.

Added L.1972, c. 715, § 2.

Effective Date. Section 3 of L. 1972, c. 715, provided that this section is effective on 60th day after May 30, 1972.

ARTICLE 3—EXEMPTION OF NON-RESIDENT

NEW YORK CITY CHARTER

AND ADMINISTRATIVE CODE

1973-1974 CUMULATIVE SUPPLEMENT ANNOTATED

VOLUME 4

Including amendments made by the Laws of 1973 and
by New York City Local Laws of 1973 through No. 31.

ANNOTATIONS INCLUDE:

33 N. Y. 2d 516
42 App. Div. 2d 311
74 Misc. 2d 713

N. Y. Law Journal, September 1, 1973

INSERT IN POCKET OF VOLUME 4

WILLIAMS PRESS, INC.
ALBANY, N. Y.
1973

CHAPTER 40

DEPARTMENT OF TRAFFIC

TITLE 1*

PARKING VIOLATIONS BUREAU

§ 303a-1.0 Parking violations bureau created.—There is hereby created in the department of traffic a parking violations bureau which shall have jurisdiction of allegations of traffic infractions which constitute a parking violation. For the purposes of this title, a parking violation is the violation of any local law, rule or regulation governing the parking, stopping or standing of a motor vehicle.

CASE NOTES

§ 1. Production of police officer to testify was prohibited between 7:00 A.M. and 1:00 P.M. and material testimony was not taken before hearing on appeal of New York City Parking Violations Bureau was required when summons stated that a car was parked at 10:00 A.M. in an area where parking was prohibited. (1972).

§ 303a-2.0 Personnel of the bureau.—a. The head of each bureau shall be the director, who shall be appointed by the commissioner. The director may delegate any of the powers and duties conferred upon him by this title.

b. The commissioner may appoint a deputy director and may employ such officers and employees as may be required to perform

* Added by L. 1969, ch. 1075, May 23, eff. July 1, 1970.

the merit of the Bureau, within the amounts available therefor by appropriation.

2. The commissioner shall appoint senior hearing examiners, not to exceed ten in number. The duties of each senior hearing examiner shall be to hear and determine the merits of each case referred to him by the hearing examiners, but not to be limited to: (1) penalties of hearings for the violation of charges of parking violations; (2) the suspension and revocation of the work of the Bureau; and (3) recommendations to the appeals board of the Bureau, as herein provided.

3. The commissioner shall appoint hearing examiners who shall receive no salary for the fulfillment of charges of parking violations. The commissioner may also designate non-compensated hearing examiners as he may deem necessary. Every hearing examiner shall have been admitted to the practice of law in this state for a period of at least five years.

§ 200-20 Functions, powers and duties of the parking violations Bureau.—The parking violations Bureau shall have the following functions, powers and duties:

a. To accept plans to, and to hear and determine, charges of parking violations;

b. To provide for penalties other than imprisonment for parking violations, provided however, that monetary penalties shall not exceed fifty dollars for each parking violation;

c. To adopt rules and regulations not inconsistent with any applicable provision of law to carry out the purposes of this title, including but not limited to rules and regulations prescribing the internal proceedings and organization of the Bureau, the manner and time of entering plans, the conduct of hearings, and the amount and manner of payment of penalties;

d. To have subpoena to compel the attendance of persons to give testimony at hearings and to compel the production of records, books, papers and other things;

e. To enter judgments and enforce them, without court process, in the same manner as the enforcement of money judgments in civil actions;

f. To compile and maintain complete and accurate records relating to all charges and dispositions;

g. To remit to the finance administrator, on or before the fifteenth day of each month, all monetary penalties or fees received by the Bureau during the prior calendar month, along with a statement thereof, and at the same time, to file a duplicate copy of such statement with the comptroller;

h. To prepare and issue a notice of violation in blank to members of the police department, the fire department, the traffic department and to other officers of the Bureau by regulation shall determine. The notice of violation, when filed in and given to or claimed by the violator, shall be filed in the Bureau, and served as provided in this title, shall constitute notice of the parking violation charge.

§ 200-10 Notice of violation.—a. The notice of violation shall contain information advising the person charged of the nature of the violation, the time in which he may plead guilty or not guilty, and the charge alleged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and time provided shall be deemed, for all purposes, an admission of liability and that a default judgment may be entered. The form and wording of the notice of violation shall be prescribed by the Director. A copy of each notice of violation served shall be filed and retained by the Bureau, and shall be deemed a receipt in the ordinary course of business, and shall be prima facie evidence of the facts contained therein.

b. The notice of violation shall be served personally upon the operator of a motor vehicle who is present at the time of service, and his name, together with the license designation as shown by the registration plates on said vehicle, shall be inserted therein. The notice of violation shall be served upon the owner of the motor vehicle if the operator is not present, by affixing such notice to said vehicle in a conspicuous place. Whenever such notice is so affixed, in lieu of inserting the name of the person charged with the violation in the space provided for the identification of said person, the words "owner of the motor vehicle hearing license" may be inserted to be followed by the license designation as shown by the registration plates on said vehicle. Service of the notice of violation by affixation as herein provided shall have the same force and effect and shall be subject to the same penalties for disregard thereof as though the same was personally served with the name of the person charged with the violation inserted therein.

2. For purposes of this section, an operator of a motor vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied, shall be deemed to be the agent of such owner to receive notices of violation, whether personally served on such operator or served by affixation in the manner aforesaid, and service made in either manner as herein provided shall also be deemed to be lawful service upon such owner.

§ 200-5.9 Liability.—a. 1. Whenever used in this title, the term "owner", shall include: (A) the registered owner of a motor vehicle used or operated in the city of New York, and (B) any person, corporation, firm, agency, association or organization that is the owner or lessor of a motor vehicle used or operated in the city of New York.

2. Whenever used in this title, the term "operator" means any person, corporation, firm, agency, association or organization that uses or operates a motor vehicle with or without the permission of the owner, and an owner who operates his own motor vehicle.

3. The operator of a motor vehicle shall be primarily liable for the penalties imposed pursuant to this title. The owner of the motor vehicle, even if not the operator thereof, shall also be liable therefor, if such motor vehicle was used or operated with his per-

mission, summons or subpoena, but in such case, the owner may recover any penalties paid by him from the operator.

6. Whenever any inconsistent provisions of this title or of any other provision of law, any person, corporation, firm, company, association or organization that is the owner or lessee of a motor vehicle shall not be liable for penalties imposed pursuant to this title if at the time the notice of violation is served, the registration plate number of the vehicle for which said notice of violation was served and the address of the lessee has been filed by the lessee with the bureau, and notice of the service of a notice of violation for a parking violation has not been given to the owner or lessee within thirty days after such service. Such notice shall be given by ordinary mail to the address on file with the bureau.

§ 302a-5.0 Hearings.—a. Notice of hearing. Whenever a person charged with a parking violation enters a plea of not guilty, the bureau shall advise such person personally or by registered or certified mail, return receipt requested, of the date on which he must appear to answer the charge at a hearing. The form and content of such notice of hearing shall be prescribed by the director, and shall contain a warning to advise the person so pleading that failure to appear on the date designated, or on any subsequent adjourned date, shall be deemed, for all purposes, an admission of liability, and that a default judgment may be rendered.

b. Conduct of Hearings. 1. Every hearing for the adjudication of a charge of parking violation shall be held before a senior hearing examiner or a hearing examiner in accordance with rules and regulations promulgated by the bureau.

2. No charge may be established except upon proof by a preponderance of the evidence.

3. The hearing officer shall not be bound by the rules of evidence in the conduct of the hearing, except rules relating to privileged communications.

4. The hearing officer may, in his discretion, or at the request of the person charged, issue a subpoena to compel the appearance of a hearing of the officer who served the notice of violation or of other persons to give testimony, and may issue a subpoena duces tecum to compel the production for examination or introduction into evidence, of any book, paper or other thing relevant to the charges.

5. In the case of a refusal to obey a subpoena, the bureau may make application to the Supreme Court pursuant to section twenty-three hundred eight of the civil practice law and rules, for an order requiring such appearance, testimony or production of evidence.

6. The hearing officer shall not examine the parking record of a person charged prior to making a determination.

CASE NOTES

§ 1. Parking Violations Bureau was required without showing any reason not required to subpoena the officer who gave the ticket. In *N. Y. L. J.* (1-18-72) 197(3) N. Y. L. J. (1-18-72) 197(3) 2, Col. 4 R.

§ 302a-7.0 Judgments.—a. The hearing officer shall make a determination on the charges, either sustaining or dismissing them. Where the hearing officer determines that the charges have been sustained he may examine the parking violations record of the person charged prior to rendering a judgment. Judgments sustaining or dismissing charges shall be entered on a judgment roll maintained by the bureau together with records showing payment and non-payment of penalties.

b. Where an operator or owner fails to enter a plea to a charge of parking violation or fails to appear on a designated hearing date or subsequent adjourned date, as prescribed by this title or by rules of regulation of the bureau, such failure to plead or to appear shall be deemed, for all purposes, an admission of liability and shall be grounds for rendering an admission of liability and shall be grounds for rendering and entering a default judgment. However, after the expiration of the time prescribed for entering a plea or making an appearance, and before such default judgment may be rendered, the bureau shall notify such operator or owner, by ordinary mail (1) of the violation charge, (2) of the impending default judgment, and (3) that a default may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. Pleas entered or appearances made within that period shall be in the manner prescribed in the notice and subject to such additional penalty or fee as the bureau may by rule or regulation determine. Such notice of impending default judgment shall not be required prior to the rendering and entry thereof in the case of operators or owners who are non-residents of the State of New York. In no case shall a default judgment be rendered or, where required, a notice of impending default judgment be sent, more than two years after the expiration of the time prescribed for entering a plea or making an appearance.

§ 302a-8.0 Appeals within the Bureau.—a. There shall be an appeals board within the bureau which shall consist of three or more senior hearing examiners, as the director shall determine.

b. An appeal from a judgment of any hearing officer shall be submitted to the appeals board, which shall have power to review the facts and the law, but shall not consider any evidence which was not presented to the hearing officer and shall have power to reverse or modify any judgment appealed from for error of fact or law.

c. A party aggrieved by the judgment of a hearing officer may obtain a review thereof by serving upon the bureau within thirty days of the entry of such judgment, a notice of appeal setting forth the reasons why the judgment should be reversed or modified.

d. Appeals shall be made without the appearance of the appellant unless requested by the appellant or the appeals board. Within ten

days after a request for an appearance, made by the appellant or the board, the board shall advise the appellant, either personally or by registered or certified mail, return receipt requested, of the date on which he shall appear. The appellant shall be notified in writing of the decision of the appeals board.

a. The service of a notice of appeal shall not stay the enforcement of a judgment appealed from unless the appellant shall have posted a bond in the amount of the judgment appealed from, at the time of, or before the service of such notice.

§ 802a-2.0 **Judicial Review**—The order of the appeals board shall be the final determination of the bureau. Judicial review may be sought pursuant to article seventy-eight of the civil practice law and rules.

§ 802a-10.0 **Separability**—If any provision of this title or the application of such provision to any person or circumstances shall be held unconstitutional or invalid, the constitutionality or validity of the remainder of this title and the applicability of such provision to other persons or circumstances shall not be affected thereby.

TITLE B

(Formerly Title A, relettered by L. 1969, ch. 1075, May 26, eff. July 1, 1970.)

§ 833b-3.0 **Permissible parking for certain purposes**: Notwithstanding any local law or regulation to the contrary, but subject to the provisions of the Vehicle and Traffic Law, it shall be permissible for a bus owned, used or hired by public or non-public schools to park at any time, including overnight, upon any street or roadway, provided said bus occupies a parking spot in front of and within the building lines of the premises of the said public school or non-public school. (Added by L. L. 1971, No. 7, Jan. 21.)

CHAPTER 19

DEPARTMENT OF TRAFFIC

§ 835-1.0 **Unlawful use or possession of official cards**—Any person who without permission of the commissioner of traffic:

1. Makes or engraves, or causes or procures to be made or engraved, or willingly aids or assists in making or engraving, a plate or other means of reproducing or printing the resemblance or similitude of an official department of traffic special vehicle identification card or any other official card issued by the department of traffic; or

2. Has in his possession or custody any implements, or materials, with intent that they shall be used for the purpose of making or engraving such a plate or means of reproduction; or

3. Has in his possession or custody such a plate or means of reproduction with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression or copy to be uttered; or

4. Has in his possession or custody any impression or copy taken from such a plate or means of reproduction, with intent to have the same filled up and completed for the purpose of being uttered; or

5. Makes or engraves, or causes or procures to be made or engraved, or willingly aids or assists in making or engraving, upon any plate or other means of reproduction, any figures or words with intent that the same may be used for the purpose of uttering any genuine card heretofore indicated or mentioned; or

6. Has in his custody or possession any of the cards heretofore mentioned, or any copy or reproduction thereof;

Is guilty of an offense punishable by a fine of not less than two hundred fifty dollars, or imprisonment for not more than thirty days, or both. (Added by L. L. 1972, No. 9, Feb. 25.)

* Probably mistaken numbering.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

PETER V. KEILEY,	:	No. 75-7226
Plaintiff-Appellant,	:	<u>AFFIDAVIT OF SERVICE</u>
-against-	:	
ELBERT HINKSON,	:	
Defendants-Appellees.	:	

-----X

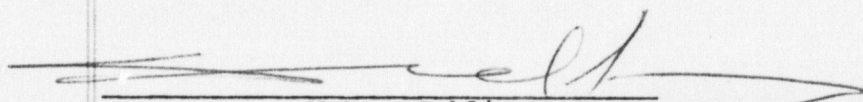
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, deposes and says:

That on the 30th day of May, 1975, affiant served the annexed and foregoing BRIEF FOR PLAINTIFF-APPELLANT on W. Bernard Richland, Esq., Corporation Counsel for New York City and attorney for defendants, 15th Floor, Municipal Building, New York, N.Y., by depositing 2 copies thereof in a securely-wrapped envelope, addressed as set forth above, the last-known address of said attorney, with first-class (priority) special delivery postage pre-paid, in the mail box maintained by the United States Postal Service and located at the northwest corner of Vesey St. and Church Avenue, New York, New York.


Carl E. Person

Subscribed and sworn to before me
this 2nd day of June, 1975.


Notary Public

EMANUEL LEVY
NOTARY PUBLIC, State of New York
No. 233796
Qualified in Kings County
Term Expires March 30, 1977